IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-09-2007

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THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE Nos.1320 & 1321 OF 2007

T.L.Vedachalam ... Petitioner(Accused No.1)

-vs-

The State, rep.by
The Inspector of Police,
SPE/CBI/ACB,
Chennai. ... Respondent(Complainant)

Revisions against the order, dated 30.07.2007, made in Crl.M.P.Nos.1276 and 1277 of 2007 in C.C.Nos.22 and 23 of 2004, on the file of Principal Special Judge for CBI Cases, Chennai.

For petitioner : Mr.V.Ramana Reddy
For respondent : Mr.N.Chandrasekaran,
Special Public Prosecutor CBI Cases,

COMMON JUDGMENT

These revisions are filed against the order of dismissal, passed by the learned Special Judge for CBI Cases, Chennai, declining to discharge the petitioner in C.C.Nos.22 and 23 of 2004.

2. The facts, which are necessary for appreciation of these cases, are as follows :

2.1. Petitioner was working as Assistant Manager in United India Insurance Company. On the strength of reliable information, a case was registered against one S.Balasubramanian, Senior Divisional Manager, and five others for the offences under Section 120-B read with Sections 420, 468, 468 read with 471 IPC and Section 13 (2) read with 13 (1) (d) of The Prevention of Corruption Act,1988. First and second accused are the officials while the remaining accused are private parties.

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2.2. The allegation was that A-1 and A-2, conspiring with A-3 to A-6, intentionally sanctioned hefty amount on the basis of false motor accident claims submitted by the transport vehicle owners, who are A-3 and A-4. A-5 and A-6 are the surveyors, for assessing damages to the vehicles and other connected affairs, who submitted false survey reports, containing bogus particulars.

2.3. After investigation, the name of first accused i.e., S.Balasubramanian, was deleted and charge sheet was laid, portraying the present petitioner as accused No.1.

2.4. The learned Principal Special Judge for CBI Cases, Chennai, framed charges against A-1 under the above said sections and since he pleaded not guilty, the case was taken up for trial, which is now in the stage of examination of witnesses. In fact, certain witnesses have been examined.

3. The bottom line contention of the learned counsel for the petitioner is that the petitioner is in no way connected with the case and that the prosecution has woefully failed to obtain sanction to prosecute him from the prescribed authority at appropriate time and, hence, the proceedings against him have to be held as non-est.

4. At the outset, it shall be stated that the sanction order was not mentioned in the charge sheet at the time of filing of the same by the investigating agency into the Court and, thereafter, the prosecution filed Criminal M.P.Nos.319 and 320 of 2005 under Section 311 read with 173 Cr.P.C., to cite Thiru Sundaresan as an additional witness. It is mentioned therein that a copy of the sanction order was already supplied to the accused. The said M.Ps. were allowed by the Court below.

5. Pertinent it is to state that the petitioner has not challenged the orders passed in Criminal M.P.Nos.319 and 320 of 2005 before proper forum.

6. Learned counsel for the petitioner would strenuously contend that filing of the sanction order before the Court is not proper and it would prejudice the rights of the petitioner and though it is a condition precedent, it comes to light only after filing of the charge sheet and, hence, on that ground, the proceedings are liable to be quashed.

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7. In support of his contention, the learned counsel garners support from a decision of the Hon'ble Supreme Court in State of H.P. v. M.P.Gupta, 2004 (2) Supreme Court Cases 349, wherein it was held as follows :

> "So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 Cr.P.C., unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of official duty. The said section not only specifies the persons to whom the prosecution is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. The word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

The same judgment of the Hon'ble Supreme Court contains answer to the question posed by the petitioner in the following terms :

> "As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Indian Penal Code is concerned and also Section 5 (2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the

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nature mentioned in Section 197 of the Code of Criminal Procedure. To put is shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

8. Mr.N.Chandrasekaran, learned Special Public Prosecutor for CBI, draws attention of this Court to a decision of the Supreme Court in Central Bureau of Investigation v. V.K.Sehgal and Another, 1999 Supreme Court Cases (Cri) 1494, wherein, it was held as follows :

"In a case where the accused failed to raise the question of valid sanction, the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction, there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution. But, once the judicial filtering process is over on completion of the trial, the purpose of providing for the initial sanction would bog down to a surplusage."

9. Admittedly, allowing of the petitions filed under Section 311 Cr.P.C. were not challenged by the petitioner and, instead, he allowed the cases to proceed. Applying the above said principles contained in the decision of the Hon'ble Apex Court, it is to be observed that it is a futile exercise on the part of the petitioner to come forward with such a contention, belatedly.

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10. Learned counsel for the petitioner laboured hard to put forth his contention that on the strength of an invalid sanction and other attending circumstances, the case should not be allowed to continue and, hence, the proceedings against the petitioner are liable to be quashed.

11. The said contention of the learned counsel for the petitioner is not acceptable, for the reason that charges were already framed and examination of witnesses has also started and

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the case is in part-heard stage. Under the circumstances, the petitioner come forward with the revisions before this Court, praying for quashing the proceedings, which cannot be countenanced either on fact or in law.

12. The further contention of the learned counsel for the petitioner that only on some information received from outside, the cases came to be registered and that the registration of the case was barred by limitation cannot be sustainable, as the said aspects are to be gone into on the background of the factual scenario and the petitioner cannot canvass the same before this Court for the present, the reason being that he is precluded from contending that he is to be discharged, since the charges were already framed.

13. In the light of what is stated above, the petitioner is not entitled for discharge from the proceedings in question. Hence, these revision petitions fail and the same are dismissed. No costs. Consequently, the connected Criminal M.P.Nos.1 and 2 of 2007 in both the cases are also dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Special Judge for (CBI Causes), Chennai

2. The Inspector of Police, SPE/CBI/ACB,
Chennai.

3. The Special Public Prosecutor for CBI Cases, High Court,
Chennai.

+ 2 ccs to Mr. V. Ramana Reddy, Advocate SR No. 55762, 55763

JRG(CO)
SR/18.9.2007 CRL.R.C.Nos.1320 & 1321/ 2007

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